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EVIDENCE

PRIVILEGED COMMUNICATIONS

The New York City council appointed a committee to investigate charges of negligence and maladministration at the city-controlled Lincoln Hospital. At the committee hearing, the hospital medical superintendent withheld confidential case record information on the grounds that the New York Civil Practices act prohibited a physician from disclosing any information acquired in attending a patient. Held, the statutory privilege included examination before legislative committees. *New York City Council v. Goldwater*, 31 N. E. (2d) 31. (N. Y. 1940).

At common law, patient-physician communications were not privileged from disclosure in judicial proceedings. However, statutes have changed the rule in the majority of the states. 8 WIGMORE, EVIDENCE (3d ed. 1939) § 2380. In the principal case the court by a liberal interpretation applied the privilege to non-judicial proceedings. It felt the decision was necessary to carry out the policy of the statute. *Buffalo Loan, Trust & Safe-Deposit Co. v. Knights of Templar & Masonic Mutual Aid Ass'n*, 126 N. Y. 450, 454, 27 N. E. 942, 943 (1891). Section 354 of the Civil Practices Act indicates that the privilege applies to *any* examination of a physician as a witness. This was strengthened by dicta in a previous New York case to the effect that witnesses before the commissioner of accounts were entitled to all the privileges and protection extended by law to witnesses in judicial proceedings. *Matter of Herschfield v. Hanley*, 228 N. Y. 346, 127 N. E. 252 (1920).

A dissent advocated restricting the statute to its "primary purpose."
Buffalo Loan, Trust and Safe-Deposit Co. v. Knights Templar and

²⁴ Board of County Comm'rs. v. Lafayette, M. and B. Ry. Co., 50 Ind. 85 (1875); *Mercantile Comm. Bank v. So. Eastern Ind. Coal Corp.*, 93 Ind. App. 313, 169 N. E. 91, 171 N. E. 310 (1929); *Wright v. Hughes*, 119 Ind. 324, 21 N. E. 907 (1889).

²⁵ Compare statutes cited *supra* note 19.

²⁶ The drafters of the Uniform Business Corp. Act expect this position to be taken by the courts. 9 UNIFORM LAWS ANN. (Perm. ed. 1932) 58.

²⁷ *Columbian Athletic Club v. State*, 143 Ind. 98, 40 N. E. 914 (1895).

Masonic Mut. Aid Ass'n, 126 N. Y. 450, 454, 27 N. E. 942, 943 (1891). But see *Atchinson, T. and S. F. R. Co. v. Reesman*, 60 F. 370, 373 (1894). Without the ability to find the facts, legislative investigations are of little help in preparing intelligent statutes. The privilege shields from inquiry the very abuse concerning which the public is entitled to full information. See *People ex rel Wood v. Lacombe*, 99 N. Y. 43, 49, 1 N. E. 599, 600 (1855); *City Bank F. T. Co. v. N. Y. C. R. R. Co.*, 253 N. Y. 49, 57, 170 N. E. 489, 492 (1930).

J.E.K.